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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR(S) : David Salgado, et al.
TITLE : METHOD AND APPARATUS FOR AUTOMATIC
UPGRADE OF A PRODUCT'S PRINTER DRIVER
APPLICATION NO. : 09/731,094
FILED : December 6, 2000
CONFIRMATION NO. : 9375
EXAMINER : Poon, King Y.
ART UNIT : 2624
LAST OFFICE ACTION : February 22, 2006
ATTORNEY DOCKET NO. : A0598/XERZ 2 00373

REPLY BRIEF UNDER 37 C.F.R. § 41.41

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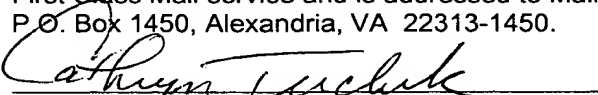
Dear Sir:

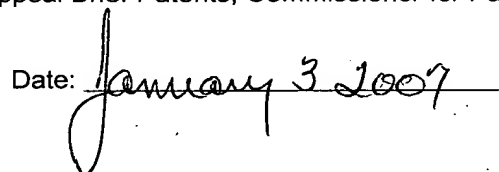
This Reply Brief is in furtherance of the Examiner's Answer dated November 30, 2006, and the Amended Appeal Brief mailed to the U.S. Patent and Trademark Office on September 5, 2006.

Appellant files herewith a Reply Brief in connection with the above-identified application wherein claims 1-11 were finally rejected in the Final Office Action of February 22, 2006.

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Cathryn Terchek

Date: 

ARGUMENTS

The Examiner's Answer mailed on November 30, 2006, did not take into consideration or misconstrued crucial arguments submitted by the Appellant.

In his answer, the Examiner primarily merely reiterates the rejections he presented in the final office action and advisory action. However, in section (10), the Examiner does address some of the Appellants' contentions presented in the Appeal Brief.

In this section, the Examiner is again attempting to argue, albeit in a more roundabout way, that a print driver is an application program, or alternately, the need to update such print drivers makes the updating of one obvious in light of a reference teaching the updating of an application program. In making this association, the Examiner states "Today, graphical user interface offer their own printer drivers, eliminating the need for an application program that runs under the interface to have its own printer driver...Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have realized that the application program of Heath would have its own printer driver or at least rely on a printer driver for printing with a particular printer; and would have been obvious to provide the application program of Heath with a printer driver for printing."

This is a confusing argument by the Examiner and does nothing to support his contention. That is, the Examiner is first saying that in today's environment, the need for an application program to have its own printer driver is eliminated. The Examiner then completely contradicts this by stating that it would have been obvious to supply the application program of Heath with a printer driver. Why would this be obvious if today's application programs do not need their own print drivers? Furthermore, the fact that an application program may rely on a print driver to print does not mean it would have been obvious to update a print driver by the same method used to update an application program.

Second, the Examiner discusses the Appellants contentions regarding the combination of Alderson with Heath and states that such a combination would not modify the operation of Heath. Appellants respectfully disagree.

The Examiner is impermissibly picking and choosing various teachings from each reference in an attempt to meet the limitations of the present claims. This

has long been impermissible, as one cannot "pick and choose among the individual elements of assorted prior art references to recreate the claimed invention." *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 8 USPQ2d 1468 (Fed. Cir. 1988). As the Board will appreciate, in a §103 analysis, a prior art reference must be considered in its entirety, i.e. as a whole, including parts that would teach away from such a combination. *W.L. Gore & Assc., Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983). Picking one feature from Alderson in an attempt to combine it with Heath to meet limitations of the present claims is impermissible.

CONCLUSION

In view of the above, Appellant respectfully submits that claims 1-11 are not anticipated or rendered obvious by the cited art.

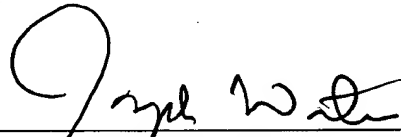
Accordingly, it is respectfully requested that the Examiner's rejections be reversed.

Respectfully submitted,

FAY, SHARPE, FAGAN
MINNICH & McKEE, LLP

Dated: _____

Jan 3, 2007



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